

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:BRK:TL-N-8066-98

HNAdams

date: January 26, 2000

to: District Director, Brooklyn
Chief, Examination Division
Attn: Denis Bricker, Chief, Group 1108

from: District Counsel, Brooklyn

subject: [REDACTED]

U.I.L. 6229.07-00

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Reference is made to your January 12, 2000 request for advice regarding the above taxpayer.

ISSUE

What is the impact of Code section 6229(f)(2) on the statute of limitations for assessing tax attributable to adjustments to the subchapter S items of [REDACTED] (" [REDACTED] ") for the years under examination (the years ended December 31, [REDACTED] through December 31, [REDACTED])?

CONCLUSION

Code section 6229(f)(2) provides that if a partner and the Service enter into a settlement agreement with respect to some but not all of the partnership items in dispute for a partnership taxable year and other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items is determined as if such settlement had not been entered into. The consequence of Code

section 6229(f)(2) is that the limitations period that is applicable to the last item to be resolved for the partnership taxable year is controlling with respect to all disputed partnership items for the partnership taxable year. Code section 6229(f)(2) does not otherwise change the limitation periods provided by Code sections 6229 and 6501. Code section 6229(f)(2) applies to settlement agreements entered into between the Service and [REDACTED]'s shareholders with respect to some but not all of the subchapter S items in dispute for [REDACTED]'s years ended before [REDACTED] because [REDACTED] is an S corporation that was subject to Subchapter D of the Code (Code sections 6241 through 6245). Code section 6244 makes Code section 6229(f)(2) applicable to the years of [REDACTED] that began before [REDACTED].

DISCUSSION

The period for assessing tax with respect to partnership items is generally the longer of the periods provided by Code section 6229 or Code section 6501. See PLR 199905040 (Sept. 25, 1998). Those provisions apply to S corporation years beginning after December 31, 1982 and before January 1, 1997. I.R.C. § 6244(1)(A) (as applicable to years beginning before January 1, 1997); Aufleger v. Commissioner, 99 T.C. 109, 111 (1992). They apply to the years of [REDACTED] beginning before [REDACTED] because [REDACTED] is an S corporation that was subject to Code Subchapter D for those years.

Code section 6501 provides generally that tax shall be assessed within three years of the later of the date a return is due or filed. I.R.C. § 6501(a) and (b). Code section 6229 provides a minimum assessment period for tax attributable to adjustments to partnership items by providing generally that the period for assessing tax attributable to a partnership item shall not expire before three years after the later of the date the partnership return for the year was filed or due. I.R.C. § 6501(n)(3) (referring to Code section 6229 for extension of period in the case of partnership items). For partnership items that convert to nonpartnership items, section 6229(f)(1) provides that the period for assessing tax attributable to such items shall not expire before the date which is one year after the date the items become nonpartnership items. Partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the partner enters into a settlement agreement with the Service with respect to such items. I.R.C. § 6231(b)(1)(C); Crnkovich v. United States, 81 AFTR2d ¶98-834 (Fed. Cl. 1998) (holding that a settlement causes a conversion of partnership items).

When a partner and the Service enter into a settlement agreement with respect to some but not all of the partnership items in dispute for a partnership taxable year, the fact that the partnership items covered by the agreement convert to nonpartnership items could create the possibility that the period for assessing tax resulting from those partnership items would be different from the period for assessing tax that results from any adjustments to the remaining partnership items. In the absence of Code section 6229(f)(2), the period within which the Service could assess the tax resulting from those items would be the greater of the period remaining under Code section 6501 or the one year period provided by Code section 6229(f)(1). See Harris v. Commissioner, 99 T.C. 121, 131 (1992). In contrast, the period within which the Service could assess the tax resulting from adjustments to the remaining partnership items of the partnership would remain the longer of the period remaining under Code section 6501 or the period remaining under Code section 6229. Before the enactment of Code section 6229(f)(2), this fractured statute of limitations discouraged the Service from entering into partial settlements in TEFRA cases by requiring the Service to track the periods of limitation on assessment for each settled partnership item. The creation of separate periods of limitation on assessment for settled partnership items could create the need for the Service to compute the tax due resulting from each partial settlement so as to be able to timely make the correct assessments.

Code section 6229(f)(2) resolved this problem for partial settlements entered into after August 5, 1997 by providing that the period for assessment of tax attributable to settled partnership items is determined as if the settlement had not been entered into as long as other partnership items remain in dispute for the partnership taxable year. Consequently, the limitations period that is applicable to the last disputed item to be resolved for a partnership taxable year is controlling with respect to all disputed partnership items for the partnership taxable year. See PLR 199905040 (Sept. 25, 1998).

Former Code section 6244 makes the foregoing partnership provisions applicable to assessments of tax attributable to subchapter S items settled by agreements between the Service and [REDACTED]'s shareholders for taxable years beginning before 1997. I.R.C. § 6244(1)(A) (as applicable to years beginning before January 1, 1997); Aufleger v. Commissioner, *supra*. Although section 1307 of the Small Business Job Protection Act of 1996 repealed Code section 6244 and the other provisions of Subchapter D that provided for the corporate level determination of the tax

treatment of S corporation items, the repeal was effective only for tax years beginning after December 31, 1996.

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect or if additional facts are developed. If the facts are determined to be incorrect or if additional facts are developed, this opinion should not be relied upon. You should be aware that, under routine procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

If you have any questions, you should call Halvor Adams at (516) 688-1737.

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